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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to	)	WT Docket No. 96-162
Establish Competitive Service Safeguards	)	
for Local Exchange Carrier Provision of	)	
Commercial Mobile Radio Services	)	

REPLY COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.

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SUMMARY

Competition is the best safeguard against marketplace abuse. Unfortunately for consumers, competition is far from established in the wireline and wireless markets of the telecommunications industry. The Bell Operating Companies ("BOCs") in this proceeding, however, attempt to persuade the Commission that competition is firmly in place and that, consequently, minimal safeguards with no significant separation are sufficient to govern BOC in-region provision of commercial mobile radio services ("CMRS"). Reality does not support the BOCs. Evidence of continued BOC abuses shows that competition has not taken hold in the wireline marketplace sufficient to restrain BOC anti-competitive behavior, and BOCs will continue to have the ability and incentive to leverage their wireline market power into the wireless arena for some time to come.

Structural separation of BOC cellular activity under Section 22.903 was put in place in an environment where the BOCs enjoyed unparalleled access to ubiquitous facilities reaching almost every home and business within their service regions, controlled bottleneck facilities essential to the provision of telecommunications services, and possessed the potential to impede competition via cross subsidization and discrimination. Despite BOC rhetoric to the contrary, nothing has changed to alter this environment. BOC market power remains essentially unchanged from the time Section 22.903 was put in place. Numerous complaints of anti-competitive BOC activity are on record both at the Commission and in the states, and competitive abuses continue today. The "pro-competitive" new interconnection regime cannot be relied on as a basis for elimination or relaxation of safeguards because incumbent LECs have

blocked the implementation of these rules and show no sign they are negotiating reasonable arrangements with CMRS providers.

The record in this proceeding cannot support a Commission decision to abandon structural separation, especially because the BOCs have failed to provide the Commission with any data showing that the purported "benefits" of structural separation outweigh the competitive harms.

Rather, the record in this proceeding supports the expansion of Section 22.903 to all in-region BOC CMRS activity, as well as the establishment of strengthened accounting, customer proprietary network information ("CPNI") and joint marketing safeguards. With sufficient safeguards in place BOCs will be unable to preserve their monopoly power and stave off competition in their core wireline monopoly and in related wireless markets. Without sufficient safeguards in place, BOC leveraging of monopoly market power will impede competition in local telecommunications markets. Nothing in the record supports BOC assertions that Section 22.903 should be eliminated. Expansion of Section 22.903 to all in-region BOC CMRS activity, along with the adoption of strengthened accounting, CPNI and joint marketing safeguards, is the only action consistent with the facts and the pro-competitive spirit of the 1993 Budget Act and the 1996 Act. Comcast urges the Commission to adopt effective safeguards promptly.

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Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, hereby submits its reply comments on the above-captioned rulemaking proceeding.[1/] The comments filed in support of elimination of Section 22.903 competitive safeguards ignore reality. Instead of providing the basic information the Commission requested that might support removal of structural safeguards, those supporting elimination of competitive ground rules instead assert that we live in a world in which competition exists in the both wireline and wireless arenas and one in which competition will thrive with the backdrop of the Commission's Local Competition Order[2/] and general accounting requirements.

These rosy scenarios, however, do not reflect the state of telecommunications competition and the incentive and abilities of LECs such as the Bell Operating Companies

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1/ See, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, WT Docket No. 96-162, GEN Docket No. 90-314, FCC 96-319 (released August 13, 1996) (the "Notice").

2/ First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, released August 8, 1996 ("Local Competition Order").

("BOCs") to preserve their monopoly market power and to stave off competition from their core monopoly markets. Because the BOCs have presented the Commission with no reasonable evidence that the marketplace will function to effectively constrain their anti-competitive behavior and because the Commission's alternative proposals do not provide sufficient protection to prevent anti-competitive behavior, the FCC must retain structural separation on all in-region BOC commercial mobile radio service ("CMRS"). As described in Comcast's comments, strengthened accounting, customer proprietary network information ("CPNI") and joint marketing safeguards are also necessary.

I. BOCs HAVE BEEN REMARKABLY SUCCESSFUL IN THWARTING COMPETITION IN THE WIRELESS AND WIRELINE MARKETS.

A. Numerous Complaints of Anti-Competitive BOC Activity Are On Record Both At the Commission and in the States.

The BOC comments display an almost callous disregard for truth or accuracy. The BOCs, for example, virtually uniformly claim that there is "no evidence" they have used their landline monopoly market power to impair CMRS competition.[3/] The record shows, however, that there have been a variety of BOC competitive problems that are not ancient history and that will persist and fester if the FCC fails to do what it set out to do in this rulemaking: to assess the need for and efficacy of its regulations on the activities of LECs with in-region CMRS operations. The Commission has more than enough "evidence" to support a finding that

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3/ See, e.g., BellSouth Comments at 32 ("The Commission cites *no evidence* that any non-structurally-separated LEC has been able to capitalize on its 'market power' in any way.") (emphasis in original); Bell Atlantic and NYNEX Comments at 14 ("Hyperbole and speculation aside, there is no concrete evidence that a LEC has, can or would use landline market power to distort and impair competition in the CMRS market.").

effective safeguards are necessary to prevent BOC leveraging of their uncontroverted market power into competitive markets and the consequent forestalling of CMRS competitive entry into the BOCs' monopoly markets.

In this proceeding commenters have detailed numerous examples of BOC anti-competitive activity. Radiofone addresses BellSouth's refusal to provide a Radiofone affiliate with roaming capability that was only remedied by direct FCC intervention; Radiofone also discusses BellSouth's predatory pricing directed at Radiofone and discriminatory charges assessed against Radiofone in BellSouth's provision of roaming service.[4/] AT&T recounts the NARUC Audit finding that Pacific Telesis deliberately misallocated all of its research and development of personal communications services ("PCS") expenses,[5/] and the Public Utilities Commission of Ohio discusses a complaint filed in Ohio by a cellular reseller alleging that LECs are favoring their affiliated cellular retailers and engaging in anti-competitive "price squeeze" activity.[6/]

Prior filings at the Commission have also disclosed anti-competitive BOC activity. For example, Comcast has filed petitions with the Commission that contain examples of Bell Atlantic's anti-competitive conduct that favored its pre-merger cellular affiliate, Bell Atlantic

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4/ Radiofone Comments at 2. Radiofone also observes that it has a formal interconnection complaint that has been pending before the FCC since 1988 without resolution. Radiofone notes with understandable frustration that the marketplace abuses complained of took place under a regulatory regime of full structural separation. There is no reason to believe that an acknowledged less effective non-structural regime could address Radiofone's legitimate competitive concerns.

5/ AT&T Comments at 8.

6/ Public Utilities Commission of Ohio Comments at 5.

Mobile Services ("BAMS").[7/] In 1994 Comcast provided the Commission with written confirmation that, despite Section 22.903(b)'s requirement that BOC landline and cellular entities operate independently, Bell Atlantic's landline personnel were conferring with BAMS personnel regarding a Comcast inquiry about access to a Bell Atlantic directory assistance database.[8/] Comcast has also told the Commission how Bell Atlantic leveraged its landline market power to restrict the advertising opportunities of competitors, and how Bell Atlantic even used its market power to cause Comcast to temporarily turn off its FCC-authorized cell site at the Spectrum Arena in Philadelphia.[9/] Further, Comcast documented Bell Atlantic's abusive behavior in failing to negotiate in good faith and provide suitable interconnection arrangements to Metrophone, a cellular subsidiary of Comcast Cellular Communications, Inc., and Comcast has presented the Commission with affidavits that these abuses have been continuing for the last 10 years.[10/] More

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7/ In October of 1994, Bell Atlantic Corporation and NYNEX Corporation sought Commission approval to transfer control of their respective cellular licenses to a single entity, Cellco Partnership. Comcast opposed the transaction because of the anti-competitive impact the combined Bell Atlantic - NYNEX entity could have on the wireless marketplace. See Comments of Comcast Corporation, In the Matter of Bell Atlantic Corporation and NYNEX Corporation, Application For Consent to Transfer of Control of Radio Licenses, Report No. CL-95-17, File No. 00762-CL-AL-1, 95 et al. (filed December 28, 1994) ("Comcast Corporation Comments"). The Commission gave its approval, and Comcast filed an Application for Review that remains outstanding. See Application for Review of Comcast Cellular Communications, Inc., In the Matter of Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company, Application For Transfer of Control of Eighty-two Cellular Radio Licenses to Cellco Partnership, File Nos. 00762-CL-AL-1-95 through 00803-CL-AL-1-95 etc. (filed June 19, 1995).

8/ Comcast Corporation Comments at 17 n.27.

9/ Id. at 18.

10/ Reply Comments of Comcast Corporation, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket No. 95-185, CC Docket No. 94-54 (filed March 25, 1996) at 12 and Exhibit B, Affidavit

(continued...)

recently, Comcast has informed the Commission that, despite the new interconnection provisions contained in the Telecommunications Act of 1996, competitive abuses continue to this day.[11/]

The Commission's 1995 CMRS interconnection proceeding was commenced precisely because the Commission was convinced that its policies had failed to provide adequate remedies for interconnecting CMRS providers. Record evidence Comcast and others presented in that proceeding demonstrate that BOCs are imposing interconnection charges on CMRS providers that are in some instances 8000 percent over their costs for transporting these calls. This fact alone is sufficient evidence of the BOCs enduring monopoly position in interconnection.

Remarkably, the BOCs glibly dismiss the significance of these many complaints. For Comcast, some of its complaints have been pending before the Commission for years, and possibly it is the lack of action from the Commission that gives the BOCs the confidence to say the complaints do not exist.[12/] The Commission cannot, however, adopt the BOC "hear no evil, see no evil" approach. In the Local Competition Order the Commission determined that the

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10/ (...continued)
of Ray Dombroski.

11/ See Letter to William F. Caton, Acting Secretary, Federal Communications Commission from Leonard J. Kennedy, Attorney for Comcast Cellular Communications, Inc. regarding the Informal Comments of Comcast Cellular Communications, Inc. in Opposition to Applications of Bell Atlantic Corporation and NYNEX Corporation for Authority to Transfer Control of Cellco Partnership Domestic Public Cellular Radiotelephone Service Licenses, Tracking No. 960221 (filed September 23, 1996).

12/ BOC confidence could be due to the fact that the Commission in the past has failed to sanction the BOCs even for proven egregious conduct. See, e.g., Computer III Remand Proceedings, Report and Order, 6 FCC Rcd 7571, 7613-4 (1991) (The Commission specifically discussed the MemoryCall case in Georgia where the Georgia Public Service Commission found that BellSouth engaged in anti-competitive unhooking and agreed that unhooking is illegal, yet failed to fine BellSouth or take other action.).

BOCs have violated longstanding CMRS interconnection requirements,[13] and the Notice acknowledges that BOC anti-competitive conduct is still a serious problem.[14] The BOCs have adopted a strategy of "malicious denial" and further have ignored the Commission's request for actual data to support BOC allegations that the costs of structural separation outweigh the benefits. The question is whether the FCC is prepared to be sold yet another bill of goods. Comcast believes that the Commission has no choice but to retain structural separation as to cellular and expand it as to BOC participation in in-region CMRS.

B. Competitive Abuses Continue Under the New Interconnection Regime.

The Petitions for Reconsideration filed on the FCC's Local Competition Order detail some of the incumbent LEC abuses taking place under the guise of interconnection "negotiations." The competitive challenges posed to wired competitors trying to obtain reasonable interconnection arrangements mirror the frustrations of CMRS carriers. AT&T, for example, asks the Commission to clarify limits on non-recurring charges because some incumbent LECs are imposing such high non-recurring charges that those charges become entry barriers to competitors.[15] MFS has found that some incumbent LECs simply have refused to

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13/ Local Competition Order at ¶ 1094. BellSouth boldly states that the Local Competition Order "did not make any finding that the preexisting CMRS interconnection policies were insufficient to protect against interconnection price discrimination . . . ." BellSouth Comments at 27 (emphasis in original). Technically BellSouth is right. What the Local Competition order found was that the BOCs violated those rules.

14/ "[F]urther regulatory oversight and intervention will be needed for some time in the future in order to prevent LECs from abusing their position of control over interconnection to the public switched telephone network." Notice at ¶ 34. See also Comcast Comments at 3-5.

15/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Petition of AT&T Corp. for Reconsideration and/or Clarification, CC Docket

(continued...)

comply with provisions of the Local Competition Order with which they disagree, and asks the Commission to confirm that the failure of an incumbent LEC to enter into an agreement that satisfies the 1996 Act should be evidence of bad faith.[16/] Further breakdowns in negotiations are virtually certain to occur in light of the pending stay of critical Commission rules that involve non-pricing as well as pricing rules designed to promote fair treatment and reasonable uniformity. Comcast's own experience in attempting to renegotiate its existing, non-reciprocal interconnection with Bell Atlantic demonstrates that BOCs are not forthcoming with basic information and seek over-broad confidentiality agreements that ostensibly serve to protect sensitive information but in effect would shield all information from disclosure to regulators except as required in arbitration. The BOCs simply do not want the FCC to know what is actually happening in the course of private interconnection negotiations.

This behavior is completely at odds with the bald BOC assertions in this docket that competition has arrived and that additional regulatory safeguards are unnecessary. Another fact that should give the Commission pause is the LECs' aggressive attempts to have the Local Competition Order overturned. If, as the BOCs' claim, they believe the Local Competition Order rules constitute important safeguards to foster and protect competition, why are the BOCs and their LEC brethren using tremendous resources to make sure those rules never become effective?

The BOCs have stated publicly that the rules contained in the Local Competition Order

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15/ (...continued)
No. 96-98, CC Docket No. 95-185 (filed September 30, 1996) at 11-15.

16/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Petition for Partial Reconsideration and Clarification of MFS Communications Company, Inc., CC Docket No. 96-98, CC Docket No. 95-185 (filed September 30, 1996) at 2-4.

are arbitrary and capricious, yet U S West voices the common BOC view, *at least in this proceeding*, when it states that "Sections 251 and 252 of the 1996 Act, coupled with the Commission's recent order implementing them, provide numerous 'interconnection safeguards' that are more than sufficient to prevent BOCs from engaging in anti-competitive practices in the CMRS market."[17/] Unfortunately, Sections 251 and 252 are not self-executing and in every manner self evident. If they were, the LECs would not be mounting the legal effort to derail the Local Competition Order's implementation.

Incumbent LECs were instrumental in eviscerating the effect of the Local Competition Order. They participated in the process before the Eighth Circuit and presumably support the Eighth Circuit's October 15 Stay Order. Now that material portions of the Local Competition Order have been stayed, a great deal of further uncertainty has been created and competition will inevitably be delayed. Without pricing rules in place incumbent LECs have no incentive to reach agreements with competitors, and the states have no guidelines to use in their arbitrations. Critical non-pricing rules have also been stayed, creating enormous confusion that benefits the incumbent LECs. Further, the Eighth Circuit Stay Order gives incumbent LECs new hope that the court will vacate all or part of the Local Competition rules, thus beginning a new round of comments and court appeals. The BOCs have given every indication that they will fight competitive entry into their monopoly markets, and have given no indication that they will conduct themselves in a manner consistent with the spirit of competition.

17/ U S West Comments at 7-8.

Accordingly, the thin reed of fair, reciprocal and cost-based interconnection the FCC identified in its Notice has proven too slender to withstand the prevailing winds. Strong safeguards are necessary until the BOCs show they are ready to compete on equal terms.

C. Structural Separation Is Needed Until Actual Competition Is In Place.

Despite all efforts of BOC competitors, the prospects for near-term competition in the local telecommunications marketplace look bleak. The apparent success of the BOC strategy to have each state decide anew each and every issue relating to interconnection creates substantial new costs and uncertainty for new entrants. There is simply no reason to believe that the BOCs will not maintain their market power indefinitely. Structural separation was adopted to prevent the BOCs from abusing their market power in the absence of competition. Until actual competition is in place, structural separation of BOC in-region CMRS activity must be maintained.

As the Notice recognizes, structural separation was put in place for BOC provision of in-region cellular service because the Commission believed that despite its best efforts, the BOCs possessed the potential to cross-subsidize and discriminate. The Notice states: "The Commission concluded that BOC control over local exchange services provides an opportunity for anti-competitive conduct . . . ."[18/] Nothing in the record shows that the Commission should come to a different conclusion now. Broad statements such as Ameritech's comment that the BOCs "no longer have the ability to leverage any alleged monopoly to favor competitive wireless services"[19/] are unavailing because they have simply no basis in fact.

18/ Notice at ¶ 13.

19/ Ameritech Comments at 4.

The Administrative Procedure Act requires the Commission to provide a "reasoned analysis" before it changes a prior policy, and the BOCs have failed to give the Commission the data it requested that might have provided the foundation for elimination (or sunset) of its safeguards.[20/] Rather than demonstrating, as the Notice requests, that the competitive benefits of eliminating structural separation outweigh the competitive harms, the BOCs instead misrepresent the facts and attempt to claim that competition is in place now. The BOCs bear the burden of proving that structural separation is no longer needed.[21/] They have failed to provide anything of substance on which the FCC might rely as a basis to eliminate structural separation. Indeed, to borrow and apply BellSouth's litany from its comments, the BOCs provide *no evidence* that nonstructural safeguards are sufficient for BOC in-region CMRS.[22/]

20/ See, e.g., People of the State of California v. FCC, 39 F.3d 919, 925 (9th Cir. 1994).

21/ Nothing in the record supports the BOC suggestion that the Commission has the burden of proving that safeguards are still needed. See, e.g., Bell Atlantic and NYNEX Comments at 9. The "premises" on which structural separation was based hold true today.

22/ BellSouth uses the phrase "*no evidence*" liberally in its comments to make empty rhetorical statements such as "The Commission cites *no evidence* that any LEC has driven its non-wireline competitor out of business." BellSouth Comments at 32.

II. THE COMMENTS SHOW THAT EFFECTIVE STRUCTURAL APPROACHES ARE NECESSARY TO PREVENT BOC ABUSE OF WOULD-BE COMPETITORS.

A. BOC Arguments That Current Nonstructural Rules Are Sufficient Have Been Refuted Numerous Times.

BOC assertions that current accounting rules and price caps are sufficient to prevent BOC cross subsidy of in-region CMRS activities are getting stale.[23/] Comcast and others have shown that Part 64 accounting rules provide only limited guidance for the separation of regulated monopoly services from non-regulated CMRS activities, and have also shown that cross subsidization is more than just theoretically possible under the current price cap regime.[24/] Interconnection also remains a problem, and will remain so at least as long as the Local Competition Order is subject to change and is not fully implemented. Despite BOC attempts here, as discussed above, to portray Sections 251 and 252 of the 1996 Act as harbingers of competition, Sections 251 and 252 will not bring competition until they are implemented under federal rules, a prospect of no interest to the BOCs. Nonstructural rules were not designed to oversee services such as CMRS, and there is no history of nonstructural safeguards protecting against abuses when the service in question is a Title II common carrier service.

B. Neither the 1996 Act Nor Regulatory Parity Require the Elimination of Structural Separation for In-Region CMRS.

Structural separation is consistent with the 1996 Act. BOC arguments that the retention and expansion of Section 22.903 would somehow violate the 1996 Act ignore the fact that in the

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23/ See, e.g., SBC Communications Comments at 3-4; Ameritech Comments at 7-8.

24/ See, e.g., AirTouch Comments at 3; Comcast Comments at 11-14.

1996 Act structural separation for BOC in-region cellular service was specifically retained.[25/] When enacting the 1996 Act some members of Congress were concerned that the BOCs be "on par" with their competitors in their ability to joint market wireless and wireline services,[26/] and they consequently adopted the joint marketing provision in Section 601.[27/] The legislative history of Section 601(d) expressly states, however, that "[t]his amendment does not lift the FCC's prohibition against the Bell operating telephone companies providing cellular services" on an integrated basis.[28/] Had Congress wanted to make BOCs "on par" with their competitors through the elimination of structural separation it could have legislated this result as it did in eliminating video dialtone.[29/] It did not. Congress specifically said that structural separation could be maintained.[30/]

25/ See, e.g., Bell Atlantic and NYNEX Comments at 11.

26/ 141 Cong. Rec. 8456 (1995) (Statement of Mr. Burr).

27/ Section 601(d) of the 1996 Act states that:

> . . . a Bell operating company or any other company may . . . jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications services and information services.

28/ 141 Cong. Rec. 8456 (1995) (Statement of Mr. Burr).

29/ See Telecommunications Act of 1996 § 302(b)(3) ("The Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87-266 shall cease to be effective on the date of enactment of this Act.")

30/ BOC arguments that the "incidental interLATA" services provision of Section 271 somehow eliminate Section 22.903 strain the words of the statute. See Bell Atlantic and NYNEX Comments at 11; BellSouth Comments at 44-46. Section 271's incidental interLATA provision on CMRS means nothing more than that BOCs are permitted to provide CMRS that "incidentally" crosses LATA boundaries without meeting the "competitive checklist" of the 1996 Act. Section 271 in no way implicates the Commission's ability to impose structural separation

Concepts of regulatory parity also do not require the elimination of structural separation. Regulatory parity only is relevant when parties are "similarly situated,"[31/] and no rational observer could say that BOCs and their competitors are "similarly situated" competitors in the local telecommunications market. Non-BOC CMRS competitors enjoy no "competitive advantage"[32/] over the BOCs; indeed, they remain dependent on the BOCs for essential facilities needed to complete calls to BOC customers that persist despite BOC claims that the 1996 Act has eliminated BOC ability to abuse their bottleneck monopolies.[33/] Only incumbent LECs, including the BOCs, enjoy ubiquitous access to virtually all homes and businesses within their service areas, only the incumbent LECs have the opportunity to use the information they acquire by serving customers via monopoly facilities to sell competitive services and only incumbent LECs, including the BOCs, have the ability to prevent or make market entry by potential competitors substantially more difficult and expensive. BOCs and their competitors are not similarly situated, and thus regulatory parity is not required.

C. Structural Separation, Along With Expanded Accounting, Joint Marketing and CPNI Rules, Will Best Protect Competition.

Regulatory parity should, however, be required for all BOC in-region CMRS. Section 22.903's structural separation requirements should be expanded to include all CMRS including PCS, and should be adopted as a safeguard along with expanded accounting, joint marketing and

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30/ (...continued)
as a regulatory safeguard on BOC in-region wireless services.

31/ See CMT Partners Comments at 13-14.

32/ SBC Comments at 2.

33/ Ameritech Comments at 9.

effective CPNI-rules. All rules, including structural separation, must be retained until actual competition in the local exchange market is in place.

As the BOCs themselves explore in detail in their comments, there are not significant differences between cellular and PCS such that one should be subject to structural separation and the other should not.[34/] The Commission cannot favor one set of competitors over another, and cannot give the BOCs greater flexibility in the provision of PCS in the name of promoting competition.[35/] BOC in-region market power is the same whether the BOC is providing CMRS using cellular, 10 MHz or 30 MHz of PCS spectrum. BOC safeguards must therefore also be the same.

1. Structural Separation For All BOC In-Region CMRS and Certifications that the BOCs Are Following the Rules.

Non-LEC commenters agree that structural separation is an essential regulatory safeguard for BOC in-region CMRS.[36/] Any regime to detect discrimination depends upon the visibility of the transactions under scrutiny. Structural separation thus acts as a preventative measure to discourage anti-competitive conduct.[37/] Structural separation is the regulatory regime in place

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34/ See Bell Atlantic and NYNEX Comments at 19-20; BellSouth Comments at 14-15.

35/ See Notice at ¶ 109. Incumbent LEC participation in in-region PCS has been minimal thus far, and there is no evidence that looser rules for incumbent LEC PCS will encourage the LECs to engineer their network architectures in a "PCS-friendly" manner. The Commission's justification for not imposing structural separation on incumbent LEC in-region PCS was infirm, and there remains no reason to retain any distinction between classes of CMRS service.

36/ See MCI Comments; CMT Partners Comments; AirTouch Comments; AT&T Wireless Comments; Public Utility Commission of Ohio Comments; Radiofone Comments; Cox Comments; Comcast Comments.

37/ See Public Utilities Commission of Ohio Comments at 4.

now for BOC in-region cellular activities, and despite repeated Commission requests in the PCS rulemaking and in the Notice, the BOCs have failed to provide the Commission with any data to support the removal of structural separation.

Structural separation is especially important because as the BOCs are the gatekeepers to the wireline network, they have access to sensitive market information material to the businesses of their competitors. Comcast as a competitor cannot share sensitive market information with Bell Atlantic if that information at the same time gets shared with BAMS by virtue of integrated operation. Without structural separation, however, it will be virtually impossible to keep a BOC CMRS affiliate from profiting from the "inside" information shared with its wireline side. How can a CMRS competitor's confidential information be protected if the officers and employees of the wireless affiliate also are officers and employees of the wireline service provider?

Because human nature is what it is, Section 22.903 structural separation is necessary to keep the BOCs from using their stewardship over the wireline network to consciously or unconsciously benefit their wireless affiliates. Further, even with structural separation in place, all BOC officers and directors and all CMRS-affiliate officers and directors must be required to certify on an annual basis that their entity is observing all Commission rules and that the BOC is complying with all Commission interconnection and other rules in its relationships with third-party carriers. Inadvertent discrimination and cross-subsidy is just as harmful as overt and discrimination and cross-subsidy, and a certification requirement will remind the BOCs of their duties under the rules. The BOCs say they are following the rules already,[38/] and therefore should not object to being asked to swear so in writing.

38/ Bell Atlantic and NYNEX Comments at 18.

2. Accounting Safeguards Must Be Expanded.

Comcast agrees with AT&T and others that expanded accounting rules are necessary to guard against the BOC incentive to misallocate costs and cross subsidize their operations in competitive markets.[39/] Comcast supports annual, comprehensive audits of BOC CMRS affiliates, along with a requirement that BOCs disclose fully all costs and revenues associated with CMRS on a line-item basis. Disclosure requirements must also be imposed on all affiliates involved with CMRS activity, not merely on the CMRS licensee itself, to ensure that creative corporate structures do not allow the BOCs to evade Commission rules. Enough information must be provided to allow independent verification that cross-subsidies are not occurring.

3. Joint Marketing Must Be Done on an Arms-Length Basis, and Any Marketing Services Offered by a BOC to a CMRS Affiliate Must Be Offered to Non-Affiliated CMRS Providers Under the Same Terms and Conditions.

The joint marketing undertaken by a BOC on behalf of its CMRS affiliate must be subject to affiliate transaction rules and be conducted on a compensatory, arms-length basis.[40/] Further, any marketing services offered by a BOC to its CMRS affiliates must also be available to non-affiliated CMRS providers on the same terms and conditions.[41/] Activities beyond pure marketing, such as the development and planning of joint services, must not be permitted, and one-of-a-kind volume discounts from BOCs to their CMRS affiliates must also be prohibited.[42/]

39/ AT&T Comments at 25.

40/ AT&T Comments at 21.

41/ Id.

42/ MCI Comments at 17-19.

Marketing should be defined in traditional terms as the promotion and sale of products or services, but should not be expanded to include all points of customer contact as the BOCs request.[43/] Joint billing could be permissible if joint billing of wireless and wireline services is also available to competitors under similar terms and conditions, but there is no justification for allowing completely unrelated services, like repair services, to be considered "marketing." No efficiencies are realized by joint provision of unrelated services like repair services (when was the last time anyone's cellular and landline telephones both needed servicing at the same time?); rather, joint provision of unrelated services merely allows the BOCs to leverage their market power in the local exchange into the wireless arena. Congress said the BOCs could joint market to be "on par" with their competitions. Congress did not, however, intend for BOC joint marketing provision to upset the delicate competitive balance put in place by the 1996 Act.

4. CPNI Must Not Be Shared Between Different BOC Services.

BOC use of CPNI must be restricted absent explicit customer consent for each type of service offered by the BOC. As Comcast and others discussed in their comments, consumers have real privacy concerns regarding the release of information about the telephone calls they make.[44/] Customer CPNI should not be released by a carrier unless and until a consumer knowingly agrees to that release. If customers are as eager for "one-stop-shopping" as is claimed, obtaining knowing customer consent for release of CPNI should not be difficult to obtain. Consumer privacy is worth the cost of obtaining written, knowing CPNI consent.

43/ SBC Comments at 7 (advocating a single point of contact for maintenance, repair, billing and "any other matter that may arise.")

44/ See, e.g., AirTouch Comments at 7.

When customers consent to release their CPNI, that CPNI should be available to all local wireline and wireless carriers under the same terms and conditions. If customers are willing to release their CPNI they are interested in more than just "one-stop-shopping," they also want to get their best deal. Letting a BOC restrict access to released CPNI to only its affiliates is nothing more than another form of leveraged BOC market power.[45/]

III. CONCLUSION.

Nothing in this docket supports a conclusion that the wireless and wireline markets have evolved to a stage where a variety of nonstructural safeguards for BOC in-region CMRS service could be effective. Evidence of continued BOC abuses shows that competition has not taken hold in the wireline marketplace sufficient to restrain BOC anti-competitive behavior, and BOCs will continue to have the ability and incentive to leverage their wireline market power into the wireless arena for some time to come. Structural separation, while not perfect, is the best regulatory method available to prevent or detect such abuse. It is also far less regulatory than the set of watered down alternatives the Notice ultimately proposes.

When combined with expanded accounting, joint marketing and CPNI safeguards, structural separation ensures that the likelihood of BOC abuses will be significantly reduced. Without all of these safeguards in place, however, the BOCs will continue to evade the rules to the maximum extent possible, knowing that the chance of detection is slim. The BOCs have shown no ability or interest in competing on "equal" terms, and instead have shown that they

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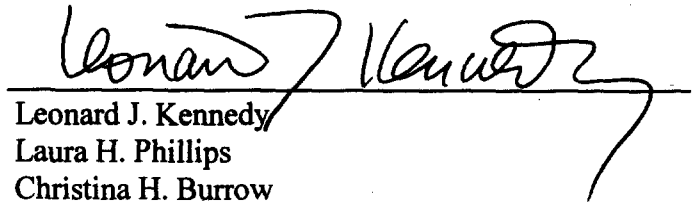
45/ At the very least, all BOC methods of obtaining CPNI release should be available to all carriers under the same terms and conditions. For example, if a BOC uses a bill stuffer to ask for CPNI release, unaffiliated carriers should also be permitted to ask for CPNI release through stuffers in customer local exchange bills.

intend to twist the facts and the law as far as they will go to preserve their existing market power. In light of the incumbent LEC behavior in implementing the Local Competition Order, the Commission must seriously question any supposition that real reform in CMRS - LEC relationships has taken root as well as any notion that BOCs cannot or will not undermine potential competition if they have the chance. The BOCs have given the CMRS industry no basis to trust anything the BOCs say or do, and the Commission must similarly question BOC assertions here. Until actual, facilities-based competition in the local telecommunications market sufficient to break the BOC bottleneck power is in place, expansion of Section 22.903 structural separation to all in-region BOC CMRS activities is required.

Respectfully submitted,

COMCAST CELLULAR COMMUNICATIONS, INC.



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